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SUBJECT: IPR ENFORCEMENT TAKEN SERIOUSLY IN SLOVENIA

Summary

1. (SBU) Overall, the government of Slovenia takes intellectual property rights (IPR) enforcement seriously, even though it is not a large problem for Slovenia in comparison to other central and eastern European countries. The general public is aware of IPR issues and various state offices and agencies dealing with these issues are eager to facilitate change and to improve enforcement practices. The main hindrance to IPR enforcement in Slovenia is the court backlog of its judicial system. The Government of Slovenia has repeatedly expressed its interest in working with the USG on IPR issues by continuing to learn about western practices.
End summary.

Cooperation with American IPR Specialists

2. (U) IPR protection in Slovenia is regulated by different acts and decrees covering individual fields of IPR as well as by EU legislation. Slovenia has signed virtually all international agreements, treaties, and conventions regarding IPR protection. A number of state offices are involved in IPR enforcement including, the Customs Administration of Slovenia, the Market Inspectorate of Slovenia, the General Police Directorate and the Slovenian Intellectual Property Office (SIPO). Post organized three visits of American IPR specialists in Spring of 2009. They met with prosecutors, private law firms, the Ministry of Economy, Customs officers, SIPO, etc. Slovenian agencies and institutions expressed a focused and genuine interest in improving the structure and enforcement of their IPR system.

Piracy Level in Slovenia among the lowest in Central and Eastern Europe

3. (SBU) According to IPR enforcement specialist Matt Lamberti from the U.S. Department of Justice, who is based in Bulgaria and visited Slovenia from June 16-17, the Slovenian population is very much aware of IPR issues and the importance of IPR protection. Slovenia has a strong legal system with Slovenes themselves acting as relatively law abiding citizens. Software piracy level (47%) in Slovenia is one of the lowest compared to other Eastern European countries (66%). However, Slovenia still experiences a higher level of pirated software when compared to the EU at 35% or the US at 20%. The Customs Authority of Slovenia reports that IPR violations are relatively high in number yet small in size. It also notes that the violations include mostly Internet purchases of counterfeit drugs. Slovenia is occasionally used as a transit country for counterfeit clothes and footwear to enter into the EU market. However, according to Lamberti, the 2000 Slovene custom inspectors throughout Slovenia are extremely effective at intercepting and destroying most of this merchandise before it is able to leave Slovenia.

Court Backlogs Hinder IPR Enforcement

15. (SBU) Slovenia's biggest hindrance to IPR enforcement is its slow court system. Every government official approached by Post mentioned the negative impact the court lag has on enforcing IPR law, specifically, the three to four years needed to resolve cases due to court backlogs. Although this remains a big problem, Slovenia has seen improvement in reducing the court backlog in 2007 and 2009 when it adopted various systemic measures while intensifying promotion of mediation between parties in dispute.

New Penal Code Wording Creates Problems

16. (SBU) The new Penal Code, which contains a problematic provision relating to IPR violations and enforcement, went into effect on November 1, 2008. The new text adds the provision "for the purpose of sale" in the first paragraph of article 148, which now reads: "Anyone who, for the purpose of sale, uses without authorization one or several Copyright works or copies thereof, the joint market price of which represents a substantial value (5,000 EUR), shall be punished by imprisonment for up to three years." Article 148 is the legal basis for criminal enforcement of copyright infringements. The wording makes effective prosecution impossible since many infringements occur without intent of further sale. For example, a company that purchased a computer program and then distributes it throughout their office could not be prosecuted because it did not sell the program. The Ministry of Justice has formed a commission to draft further changes to the penal code now in force. During Lamberti's June 16-17 visit to Ljubljana, he discussed this issue with several lawyers and ministers stressing the problems created by the new wording. Although internet piracy does exist, there have been no prosecuted cases of illegal software downloads. Slovenian experts are aware that

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the Penal Code, as it stands, could violate WTO and TRIPS, both of which Slovenia is a member to.

G-8 and Council of Europe 24/7 Network promoted by Lamberti in Slovenia

17. (U) During Lamberti's visit to Slovenia, he invited and encouraged the Slovene government to join the 24/7 Network where each member is required to designate a point of contact available on a twenty-four hour, seven-day-a-week basis in order to ensure immediate assistance on investigations or proceedings concerning criminal offenses related to computer systems and data, or for the collection of evidence in electronic form. Using the network extends the storage time of internet data allowing the government to issue a proper search warrant before the data is erased. The 24/7 Network is outlined in more detail in Article 35 of the Council of Europe's Convention on Cybercrime.

Comment

18. (SBU) Post will urge contacts to amend the problematic Article 148 of the Penal Code. We will also continue to encourage Slovenia to join the 24/7 network. Lamberti mentioned that Slovenia is likely to be a strong role model for IPR enforcement in the region and that there is a strong interest throughout the former Yugoslavia in what Slovenia is doing. Post looks forward to an ongoing engagement with the GoS and to focusing more directly on specifics such as training, clearly defining legalities, logistics, and regional activities.

19. (U) Matt Lamberti did not have a chance to clear this cable.
FREDEN